

IC 23-17-11

Chapter 11. Voting

IC 23-17-11-1

List of members entitled to notice of meeting; inspection; validity of action not affected by unavailability of list; limitation on inspection imposed by religious and public benefit corporations

Sec. 1. (a) After fixing a record date for a notice of a meeting, a corporation shall prepare a list of the names of the corporation's members who are entitled to notice of a members' meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by a member for the purpose of communication with other members concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. Subject to IC 23-17-27-2(c) and IC 23-17-27-5:

- (1) a member;
- (2) a member's agent; or
- (3) an attorney authorized in writing;

may, on written demand, inspect and copy the list, during regular business hours and at the member's expense, during the period the list is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and a member, the member's agent, or an attorney authorized in writing may inspect the list at any time during the meeting or an adjournment.

(d) If the corporation refuses to allow a member, the member's agent, or an attorney authorized in writing to inspect or copy the list of members during the period specified in subsection (b), the circuit court or superior court of the county where a corporation's principal office, or, if no principal office is located in Indiana, the corporation's registered office, is located, on application of the member, may order the inspection or copying.

(e) Refusal or failure to prepare or make available the list of members does not affect the validity of an action taken at the meeting.

(f) The use and distribution of information acquired from inspection or copying the list of members under the rights granted by this section are subject to IC 23-17-27-2(c) and IC 23-17-27-5.

(g) The articles of incorporation or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy the corporation's records.

(h) The articles of incorporation of a public benefit corporation

may limit or abolish the right of a member, the member's agent, or an attorney authorized in writing to inspect or copy the membership list if the corporation provides a reasonable means to mail communications concerning the corporation to other members through the corporation at the expense of the member making the request.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-2

Refusal to provide names or identifying information relating to contributors

Sec. 2. Notwithstanding the requirements of this article, a corporation may refuse to provide names or identifying information relating to contributors.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-3

Member entitled to one vote; membership standing of record in names of two or more persons

Sec. 3. (a) Unless articles of incorporation or bylaws provide otherwise, a member is entitled to one (1) vote on each matter voted on by the members.

(b) Unless articles of incorporation or bylaws provide otherwise, if a membership stands of record in the names of at least two (2) persons, the acts of the persons with respect to voting have the following effect:

(1) If one (1) person votes, the vote binds all persons.

(2) If more than one (1) person votes, the vote shall be divided on a pro rata basis.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-4

Quorum; increasing or decreasing quorum; vote on matter not described in notice for regular or annual meeting; votes considered present for quorum purposes

Sec. 4. (a) Unless this article, articles of incorporation, or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter constitutes a quorum for action on that matter.

(b) An amendment of articles of incorporation or bylaws to decrease the quorum for a member action may be approved by either of the following:

(1) The members.

(2) Unless prohibited by articles of incorporation or bylaws, the board of directors.

(c) An amendment of articles of incorporation or bylaws to increase the quorum required for a member action must be approved by the members.

(d) Unless at least one-third (1/3) of the voting power is present in person or by proxy, the only matters that may be voted upon at an

annual or a regular meeting of members are those matters that are described in the meeting notice.

(e) After a vote is represented for any purpose at a meeting, the vote is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-5

Voting; approval of actions

Sec. 5. (a) If a quorum exists, action on a matter other than the election of directors is approved if the votes cast favoring the action exceed the votes cast opposing the action unless this article, articles of incorporation, or bylaws require a greater number of affirmative votes.

(b) An amendment to articles of incorporation or bylaws to increase, decrease, or otherwise change the vote required for a member action must be approved by the members.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-6

Vote by proxy

Sec. 6. (a) A member may vote the member's membership in person or by proxy.

(b) Unless articles of incorporation or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form:

(1) personally; or

(2) by an attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a shorter or longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the member.

(e) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(f) Subject to section 8 of this chapter and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation may accept the proxy's vote or other action as that of the member making the appointment.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-7

Election of directors; cumulative voting

Sec. 7. (a) Unless otherwise provided in articles of incorporation or bylaws, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a

quorum is present.

(b) Members may not cumulate votes for directors unless articles of incorporation or bylaws so provide.

(c) A statement included in articles of incorporation or bylaws that states all or a designated class of members is "entitled to cumulate their votes for directors" (or similar words) means that the members designated may do the following:

(1) Multiply the number of votes the members are entitled to cast by the number of directors for whom the members are entitled to vote.

(2) Cast the product for a single candidate or distribute the product among at least two (2) candidates.

(d) Cumulative voting may not occur at a particular meeting unless either of the following occur:

(1) The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized.

(2) A member who has the right to cumulate the member's votes gives notice at least forty-eight (48) hours before the time set for the meeting of the member's intent to cumulate the members' votes during the meeting, and if one (1) member gives this notice, all other members of the same class participating in the election are entitled to cumulate the members' votes without giving further notice.

(e) A director elected by cumulative voting may be removed by the members without cause if the requirements of IC 23-17-12-8 are met unless the following occur:

(1) The votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted.

(2) The entire number of directors authorized at the time of the director's most recent election were then being elected.

(f) Members may not cumulatively vote if the directors and members are identical.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-8

Election of directors; organizational unit, geographic unit, preferential voting, or other reasonable method

Sec. 8. A corporation may provide in the corporation's articles of incorporation or bylaws for election of directors by members or delegates:

(1) on the basis of a chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

As added by P.L.179-1991, SEC.1.

IC 23-17-11-9

Acceptance or rejection of votes; liability; validity of corporate action

Sec. 9. (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give the vote, consent, waiver, or proxy appointment effect as the act of the member.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of the member, the corporation, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give the vote, consent, waiver, or proxy appointment effect as the act of the member if the following conditions exist:

(1) The member is an entity and the name signed purports to be that of an officer or agent of the entity.

(2) The name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) At least two (2) persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders.

(4) In the case of a mutual benefit corporation the following conditions exist:

(A) The name signed purports to be that of an administrator, an executor, a guardian, or a conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(B) The name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about any of the following:

(1) The validity of the signature on the vote, consent, waiver, or proxy appointment.

(2) The signatory's authority to sign for the member.

(d) A corporation and a corporation's officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(e) A corporate action based on the acceptance or rejection of a

vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.
As added by P.L.179-1991, SEC.1.